Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1656

MERLIN BEAN,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA.

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MERLIN BEAN,

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vs.

STATE OF IOWA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA.

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Iowa, entered on the 17th day of March, 1976, in the case entitled *"State of Iowa,* Appellee, v. *Merlin Bean,* Appellant."

CITATIONS TO OPINIONS BELOW.

The ruling of the District Court of the State of Iowa in and for Linn County in the case of *"State of Iowa* v. *Merlin Bean"* is unreported and is printed in Appendix G hereto, *infra,* pp. A. 18. The opinion of the Supreme Court of the State of Iowa, printed in Appendix B, hereto, *infra,* pp. A. 2-A. 9, is reported in 239 N. W. 2d 556.

JURISDICTION.

The opinion of the Supreme Court of the State of Iowa was entered on March 17, 1976. A request for a re-hearing was not made, and the time allotted for the filing for a Petition for Rehearing expired on April 1, 1976. This petition for Certiorari was filed within 90 days of March 17, 1976, the date upon which the opinion of the Supreme Court of the State of Iowa was filed. This Court's jurisdiction is invoked under 28 U. S. C. 1257(3).

QUESTIONS PRESENTED FOR REVIEW.

1. Whether the Federal Constitutional right of the petitioner to be secured against unreasonable searches, seizures, and to have no warrant issue but upon probable cause was violated by a warrant issued by the Honorable John F. Siebenmann, a judge of the Iowa District Court, Linn County, Iowa.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

The Federal Constitutional provisions involved are the following, and are printed in Appendix A hereto at page A1 *infra*:

1. Amendment 4, of the United States Constitution.
2. Amendment 14, Section I of the United States Constitution.

STATEMENT OF THE CASE.

On or about the 14th day of December, 1973, an Information was filed in the District Court of Linn County, Iowa, charging the Petitioner with the crime of Receiving Stolen Property in violation of Section 712.1 of the 1973 Code of Iowa. The Petitioner entered a plea of not guilty, and subsequently filed a motion to suppress evidence seized at his residence pursuant to

a warrant issued by the Honorable John F. Siebermann, a Judge of the Iowa District Court of Linn County, Iowa.

On May 3rd, 1974, an Order was entered by the Honorable A. F. Honsell, Jr., a Judge of the Sixth Judicial District of Iowa, overruling Petitioner's Motion to Suppress. The Petitioner's Motion to Suppress and the amendment thereto are found in Appendix E and Appendix F respectively pp. A. 16-A. 17.

On the 11th day of October, 1974, the Petitioner was tried and found guilty by jury verdict.

On the 21st day of November, 1974, the Honorable Hansel J. Chapman, Judge of the Sixth Judicial District of Iowa sentenced the Petitioner to a term not to exceed 5 years in the Iowa State Penitentiary at Fort Madison, Iowa.

On the 21st day of November, 1974, the Petitioner herein appealed the judgment and sentence of the Iowa District Court to the Supreme Court of Iowa, asserting that the lower Court had, in overruling his Motion to Suppress, violated his Fourth Amendment right to be secure against unreasonable searches, and that no search warrant be issued against Petitioner or his residence except upon probable cause.

On the 17th day of March, 1976, the Supreme Court of Iowa affirmed the District Court's decision overruling the Petitioner's Motion to Suppress.

ARGUMENT.

The Petitioner is petitioning the United States Supreme Court for a Writ of Certiorari to the Supreme Court of Iowa to determine whether the Federal Constitutional guarantees of the Fourth and Fourteenth Amendments forbidding unreasonable searches and the issuance of warrants except upon probable cause have been violated by the search of his residence by members of the Cedar Rapids Police Department.

In the instant case an affidavit was filed by a detective of the Cedar Rapids, Iowa, Police Department requesting that a warrant be issued to search the residence and premises of the Petitioner. The affidavit revealed that the detective had interviewed a private citizen who had purchased merchandise from the Petitioner's wife, and that part of the merchandise had been identified as merchandise stolen during a break-in on the 2nd day of November, 1973. The affidavit indicated that the detective had taken a statement regarding the purchases on the 28th day of November, 1973, and his request for a search warrant was presented to the issuing magistrate on the 29th day of November, 1973. The affidavit contained no statement as to when the citizen informer purchased the stolen goods, and the judge issuing the warrant was not informed of the date of the purchase, although it was manifest that the purchase could not have occurred more than 27 days prior to the date of application for the warrant since the goods involved were stolen on the 2nd day of November, 1973. It is apparent, then, that the judge issuing the warrant sanctioned a search of the Petitioner's residence based upon an alleged sale of easily moved goods which could have taken place as much as 27 days prior to the application for the warrant.

It is well established that a magistrate must have a sufficient basis in the information presented to him to independently conclude that probable cause exists at the time he issues his warrant. *Sgro* v. *United States*, 287 U. S. 206, 53 S. Ct. 138, 77 L. Ed. 260 (1932); *United States* v. *Boyd*, 422 F. 2d 791 (6th Cir. 1970).

The timeliness of the search is an essential ingredient of probable cause, for property must be recently placed on the scene to justify a search. *Durham* v. *United States*, 403 F. 2d 190 (9th Cir. 1968); *United States* v. *Guinn*, 452 F. 2d 29 (5th Cir. 1972). Failure to recite the date upon which the stolen goods were purchased would normally be fatal. See *Rosencranz* v. *United States*, 356 F. 2d 310 (1966); *United States* v. *Borch*, 209 F. Supp. 15 (1962). In the instant case, however, as previously noted, the purchase had to take place between the date of the theft of the goods, on the 2nd of November, 1973, and the date on which the detective took a statement from Mr. Lawrence, the purchaser, which was the 28th day of November, 1973. Petitioner contends that, in view of the ease of which the goods allegedly stolen could be transported, and the possible 27 day period between the time of purchase and the presentation of the information to the magistrate, there was not probable cause to believe that the goods sought were on the premises which the police sought to search.

In its opinion of March 17, 1976, the Iowa Supreme Court stated that the sufficiency of the information attending the request for the warrant would be tested in the absence of specific information, by assuming, based upon the facts presented by Detective Engrav, that maximum time possible between the purchase and the application for the warrant, 27 days, had elapsed. The Court, however, found this interim acceptable in the light of the detective's allegations of prior illegal activities by the petitioner and his wife, and the fact that the property allegedly sold by Petitioner's wife was only a part of a much larger amount of stolen property which had been stolen from a single residence. The Petitioner contends that there is not sufficient support for these inferences in the information presented to the judge who issued the search warrant. It is apparent that some of the items alleged to be stolen may have been on the defendant's premises at the time of the purchase, but no information was presented to the judge from which he could reasonably conclude that all of the property stolen and listed in the exhibit attached to the detective's affidavit was ever in the possession of the Petitioner or his wife.

A search for specific stolen goods is reasonable only when there is probable cause to believe they will be recovered in a particular dwelling. *Camara* v. *Municipal Court of San Francisco*, 387 U. S. 523, 18 L. Ed. 2d 930, 87 S. Ct. 1727 (1966).

In the present case, the 27 day delay between the possible purchase recited in the detective's affidavit and the issuance of the warrant would be critical, for all of the objects taken from the Wellso household, which are listed in Appendix C of this petition, were objects which could be easily moved, if, in fact, they ever were all in one location.

The final argument by the trial Court, that there was evidence of continuing illegal activity, appears to lack a sufficient basis for application. The detective's remarks in his application for the warrant, which allude to past activities of the Petitioner's family, also fail to provide the judge with a time referent. There is no indication as to how much time had elapsed between the occurrence of the events within the officer's knowledge and the date of the affidavit. Additionally, Detective Engrav does not attest to any other instance of illegal activity at the residence which he desired to search. There was then, no recital of continued illegal activity at the location to be searched, and the application failed to provide the factual basis from which a judge might independently determine that continued illegal activity was taking place. The facts presented to the judge by the affiant, the Petitioner contends, fall far short of those supporting a finding of continuing illegal activity. See *United States* v. *Harris*, 403 U. S. 573, 91 S. Ct. 2075, 20 L. Ed. 2d 306 (1971).

Probable cause demands more than "mere" suspicion. *Draper* v. *United States*, 358 U. S. 307, 79 S. Ct. 329, 3 L. Ed. 2d 327 (1959). "[I]t is manifest that the proof must be a fact so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time." *Sgro* v. *United States*, *supra*, at pg. 210 of 287 U. S., and at pg. 140 of 53 S. Ct. The Petitioner contends then, that if the 27 day interval between the alleged purchase of stolen goods and the application of search warrant is assumed, as it should be in the absence of any specific date, the information presented to the judge does not support a finding of probable cause to search the residence of the Petitioner at the time the warrant was issued. The fact that the merchandise purchased was allegedly part of a larger amount of goods taken from a single location does not, in the absence of other facts, support the inference that the Petitioner either took all of the merchandise or had it entirely in his possession at the location searched. The allegations of continuing illegal activity, as previously noted, provide no time referent for the magistrate and contain no recitals of illegal activity at the location to be searched. As a result, the grounds for the issuance of the warrant become speculative, and fail to establish probable cause, violating the Petitioner's right to be free from unreasonable searches and seizures as guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States.

CONCLUSION.

For the foregoing reasons the Petitioner respectfully prays that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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Attorneys for Petitioner.

APPENDIX A.

1. Amendment 4 of the United States Constitution:

   The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

2. Amendment 14, Section 1 of the United States Constitution:

   All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX B.

IN THE SUPREME COURT OF IOWA.

STATE OF IOWA, *Appellee,*	Filed March 17, 1976.	
vs.	44	
MERLIN BEAN, *Appellant.*	57890	

Appeal from Linn District Court—A. F. Honsell, Jr., Harold D. Vietor, and Ansel J. Chapman, Judges.

Defendant's appeal from his conviction of receiving stolen goods in violation of § 712.1, The Code, challenges pretrial rulings.—Affirmed.

Jerald W. Kinnamon and Jon M. Kinnamon, of Cedar Rapids, for appellant.

Richard C. Turner, Attorney General, Michael W. Coriden, Assistant Attorney General, and Gene Kopecky, County Attorney, for appellee.

Submitted to Moore, *C. J.*, and Uhlenhopp, Reynoldson, Harris, and McCormick, *JJ.*

HARRIS, *J.*

Merlin Bean (defendant) was tried and convicted of the crime of receiving stolen goods in violation of § 712.1, The Code. He appeals, assigning as error various pretrial rulings. We affirm the trial court.

Detective Engrav of the Cedar Rapids police had been assigned to help in solving a series of break-ins around the Cedar Rapids area, including one occurring November 2, 1973. On November 28, as part of his investigation, Engrav took a statement from Roy Lawrence.

Lois Bean, defendant's wife, had sold Lawrence a valuable stamp, apparently at his shop. After purchasing the stamp, it was identified as having been stolen during the November 2 break-in. Lawrence stated he had also gone to the Bean residence and been shown other merchandise. Some of the items Lawrence purchased there had likewise been turned over to the police as stolen goods. The dates of Lawrence's purchase of the stamp and visit to the Beans' residence do not appear to have been disclosed to the judge issuing the search warrant.

Detective Engrav's affidavit for a search warrant, dated November 29, set out the above facts. It additionally included Engrav's sworn assertion he "personally [knew] that stolen merchandise has been handled by the Bean family in the past and [he] also [knew] that both of the Bean family, Lois and Merlin [defendant] have been charged with violations of state laws for stealing and/or stolen merchandise."

On March 13, 1974 Bean filed a motion to suppress, alleging the search warrant was not based on probable cause. The motion was overruled.

I. Defendant argues timeliness is an essential ingredient of probable cause, that property must be recently placed on the scene to justify a search. He cites Durham v. United States, 403 F. 2d 190 (9 Cir. 1968) and United States v. Guinn, 454 F. 2d 29 (5 Cir. 1972).

Defendant contends the information for the search warrant was insufficient because it was stale. He points out the judge could not know when the stamp was allegedly sold to Lawrence or when Lawrence saw the merchandise at the Bean residence. He does concede the stamp could have been purchased no earlier than November 2, 1973 when it was stolen.

We should note a somewhat similar question is not involved in this submission. Defendant does not argue there was no probable cause for lack of any specific date. See 68 Am. Jur. 2d, Searches and Seizures, § 70, p. 724; Annot., 100 A. L. R. 2d 525, 527, § 3. Since it is manifest no greater period than 27

days could be involved, failure to note a specific date should not be a conclusive bar. See 79 C. J. S., Searches and Seizures, § 73(d), p. 858. But he insists the court must assume the maximum time elapsed. See State v. Birkestrand, ... N. W. 2d ..... (Iowa 1976). In view of the ready portability of the goods sought, he argues the warrant must be found invalid.

It has long been established the issuing magistrate must find probable cause at the time the search warrant is issued, and not merely at some earlier time. Sgro v. United States, 287 U. S. 206, 53 S. Ct. 138, 77 L. Ed. 260 (1932).

We note, approve, and adopt the following:

> "The proof of probable cause which must be made before a search warrant may be issued must be of facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time, and whether the proof meets this test must be determined by the circumstances of each case. Generally, it may be said that no more than a 'reasonable' time may have elapsed, and that the recital must be of facts so closely related to the time of issuance of the warrant as to justify a finding of probable cause at that time. * * *. In determining whether the lapse of time has been unreasonable, heavy reliance will often be placed upon the nature of the alleged offense, a greater lapse of time being permissible where the activity is of a continuous nature as distinguished from an isolated violation." 68 Am. Jur. 2d, Searches and Seizures, § 70, pp. 724-725. See also Bastida v. Henderson, 487 F. 2d 860, 864 (5 Cir. 1973); *Birkestrand*, supra.

A claim of staleness of facts precluding issuance of the warrant is not to be determined by a mere computation of the number of elapsed days. United States v. Rahn, 511 F. 2d 290, 292 (10 Cir. 1975) cert. denied, ... U. S. ....., ... S. Ct. ....., ... L. Ed. 2d ..... (.....); United States v. Harris, 482 F. 2d 1115, 1119 (3 Cir. 1973); United States v. Townsend, 394 F. Supp. 736, 744 (E. D. Mich. 1975).

There is some merit in defendant's contention the property to be seized in the instant case was readily removable. This

factor was noted in *Guinn*, supra, 454 F. 2d at 36 and in *Rahn*, supra, 511 F. 2d at 292-293. In the instant case there is evidence of attempts to sell the goods. Compare with *Rahn*, supra.

However there is also merit in the State's contention the evidence shows a continual violation by defendant and his wife so as to make timeliness less essential. Bastida v. Henderson, supra, 487 F. 2d at 464 and *Harris*, supra, 482 F. 2d at 1119. The record shows "an accumulation" of evidence, not likely to disappear. Where larger amounts of stolen property are involved there seems to be greater likelihood the stolen property sought could still be found. *Townsend*, supra, 394 F. Supp. at 744.

The test is whether a person of reasonable prudence would believe a crime was being committed on the premises to be searched or evidence of a crime was being concealed there. United States v. Neal, 500 F. 2d 305, 307 (10 Cir. 1974). The test is one of probability and not certainty. We believe the trial court's refusal to suppress the evidence obtained in the search should be affirmed.

In issuing the warrant the court had before it two separate purchases of allegedly stolen property obtained from defendant's wife. One of the purchases had been made at defendant's residence. The other item purchased was identified as having been stolen in a break-in where considerable property had been taken. A list of the goods taken was attached to Engrav's affidavit. The list was three pages long. It was reasonable to believe that even after as much as 27 days had passed some of the property would still be found at defendant's residence.

Defendant's first assignment is without merit.

II. Defendant second assignment challenges a ruling by the trial court recognizing an attorney-client privilege under § 622.10, The Code. At the suppression hearing Brent Harstad, a Cedar Rapids lawyer, was called to testify. Harstad stated he was attorney for certain Cedar Rapids police officers. Harstad recalled he had informed defendant's uncle, Algy Long, and

Jim Fitzpatrick "that some information had been given me at a prior time that led me to believe there was a possibility that there was some question as to the legality of the search of Mr. Bean's property."

Long testified Harstad had told him he could give Bean's attorney 'some information leading to the fact that they [were] in the house, in Merlin C. Bean's residence, before they had obtained the search warrant." At the suppression hearing Harstad was asked:

> "Q. Can you tell us what your sources of information are? A. No, that's privileged. I would claim the privilege under Section 622.10.
>
> "Q. That would be as an attorney conferring with a client? A. Yes, sir.
>
> "Q. Would the clients to whom you're referring be one of the number of Cedar Rapids Police Officers who you are representing? A. I think that would be privileged also.
>
> "Q. Who was the client that gave you this information? A. I would claim the privilege under 622.10, also; attorney-client privilege.
>
> "Q. Do you mean the name of the individual? A. Yes, sir."

The controversy in the trial court centered principally around the question of waiver of privilege, not the question of existence of privilege. On appeal defendant assigns the trial court's ruling that an attorney-client privilege existed at all.

There are two threshold questions. First it might be asked whether the attorney may claim the attorney-client privilege for an absent client. The privilege belongs to the client and the client alone can waive it. But where it has not been waived another question is presented on the claim of it. If the client "* * * is not present at the taking of testimony, nor a party to the proceedings, the privilege may be called to the court's attention by anyone present, such as the attorney for the absent client, or a party in the case, or the court of its own motion may protect the privilege. * * *." McCormick on Evidence

(Second Ed. 1972) § 92, p. 193. We have said the right of an attorney under such circumstances amounts to a duty. Chicago G. W. R. Co. v. McCaffery, 178 Iowa 1147, 1154-1155, 160 N. W. 818, 821 (1917). See also Shepherd v. McGinnis, 257 Iowa 35, 47, 131 N. W. 2d 475, 482 (1964). It was appropriate for the witness to call the matter to the court's attention.

There is a grave threshold question of whether the assignment of error urged on appeal was adequately preserved. It is well settled a party cannot announce one reason for an objection at trial and then, on appeal, rely upon a different one to challenge an adverse ruling. State v. Hinsey, 200 N. W. 2d 810, 816 (Iowa 1972). The reason for the rule serves also to test the sufficiency of the objection. "* * * The trial court has the right to know the basis for an objection so that any defect may, if possible, be remedied and the trial saved. * * *." State v. Coffee, 182 N. W. 2d 390, 393 (Iowa 1970).

Under this test we believe defendant's claim was scarcely but adequately preserved. However one ground now urged supporting it—a claim of violation of defendant's right to compulsory process under Amendments 6 and 14, United States Constitution, and Article 1, § 10, Iowa Constitution—was not even remotely mentioned in trial court. Hence we give that ground no consideration on appeal.

Defendant is right in asserting the privilege does not ordinarily extend to the identity of a client.

> "Does the privilege for confidential communications, extend to the fact of consulting or employing such an officer, when intended to be confidential? The weight of authority denies the privilege for the fact of consultation or employment, including the component facts of the identity of the client* * *." McCormick on Evidence (Second Ed. 1972) § 90, pp.185-186. See Rand v. Ladd, 238 Iowa 380, 391 26 N. W. 2d 107, 112 (1947); Wyland v. Griffith, 96 Iowa 24, 27-28, 64 N. W. 673, 674 (1895). See also In re Michaelson, 511 F. 2d 882, 887-888 (9 Cir. 1975), cert. denied, ... U. S. ....., 95 S. Ct. 1979,

..... L. Ed. 2d ..... (1975); Baird v. Koerner, 279 F. 2d 623, 629-630 (9 Cir. 1960); 8 Wigmore, Evidence (McNaughton rev. 1961) § 2313, pp. 609-610; 46 Iowa L. Rev. 904, 905 (1961); 81 Am. Jur. 2d, Witnesses, § 213, pp. 244-246; 97 C. J. S., Witnesses, § 283(e), pp. 802-803; Annot., 16 A. L. R. 3d 1047.

The State concedes the foregoing principles but relies upon an exception. In the ordinary case disclosure of the existence of an attorney-client relationship could do no harm to the client. The exception which arises in special situations has been described as follows:

> "While the disclosure of the name or identity of a client is generally held not, in and of itself, a matter within the attorney-client privilege, it has become so in situations in which so much has been divulged with regard to the legal services rendered or the advice sought, that to reveal the client's name would be to disclose the whole relationship and confidential communications. Thus, in a number of civil actions courts have declared a client's name privileged where the subject matter of the attorney-client relationship has already been revealed; and in criminal proceedings, particularly where the attorney is not the accused, courts have recognized that a client's name may be privileged if information already obtained by the tribunal, combined with the client's identity, might expose him to criminal prosecution for acts subsequent to, and because of, which he had sought the advice of his attorney. * * * ." 81 Am. Jur. 2d , Witnesses, § 213, p. 246. See also In re Grand Jury Proceedings, 517 F. 2d 666 (5 Cir. 1975); American Can Company v. Citrus Feed Co., 436 F. 2d 1125 (5 Cir. 1971); Baird v. Koerner, supra, 279 F. 2d at 629-630, 635; 16 A. L. R. 3d at pp. 1053-1054 .

The determination of whether identity of a client should fall within the foregoing exception is largely within the trial court's discretion. See 46 Iowa L. Rev. at 909. We believe the trial court exercised that discretion properly in the instant case.

Defendant's second assignment is without merit.

III. Defendant's final assignment challenges denial of his motion for bill of particulars. The motion was twofold.

First defendant sought information on "the manner in which the State expects to identify the property alleged to have been received and concealed herein." The trial court was right in denying the motion for such a purpose. We rejected defendant's contention in State v. Lass, 228 N. W. 2d 758, 765 (Iowa 1975). See also 42 C. J. S., Indictments and Informations, § 156(a), pp. 1092-1093.

The second facet of defendant's motion sought a more precise description of the property alleged to have been received and concealed. A motion for a bill of particulars is addressed to the sound discretion of the trial court. We reverse only if that discretion is abused. *Lass*, supra, 228 N. W. 2d at 765; State v. Galloway, 167 N. W. 2d 89, 90 (Iowa 1969) and State v. Salter, 162 N. W. 2d 427, 431 (Iowa 1968).

In overruling the motion the trial court expressly noted defendant had the right to personally examine the property by virtue of a prior trial court ruling. Under this state of the record defendant was in no way harmed by the ruling he challenges. We need not reach the question of whether, in the absence of such right to inspect, there would have been merit in defendant's contention.

AFFIRMED.

APPENDIX C.

INFORMATION FOR SEARCH WARRANT
(Filed December 3, 1973)

STATE OF IOWA }
COUNTY OF LINN } ss:

I, Francis Engrav, being first duly sworn on oath states that he is a credible resident of Linn County, Iowa, that he has good reason and probable cause to believe and does believe, that certain personal property described as follows:

Property stolen in the break in at 345 Woodland Drive SE on 11-2-73 of Dr. Wellso as reported to police. See attached Exhibit "A" for specifics and lists of the stolen merchandise. (list as 3 full pages long)

(a) has been (stolen) (taken) and illegally kept; and/or

(b) has been used as a means of accomplishing a public offense; and/or

(c) is being used with intent to commit a public offense; and/or

(d) is property relevant and material as evidence in a criminal prosecution; and/or

(e) held in violation of the laws of the State of Iowa: To-wit Section 712-21 and 708-8 of 1973 Code at the following described premises, place, residence, and/or automobile:

609 Wiley Boulevard NW residence of Lois and Merlin "Buck" Bean in Cedar Rapids, Iowa Linn County and all structures at this property.

That the facts and circumstances which lead me to believe that there is probable cause that a crime was committed and that the above described premises, place, residence and/or automobile should be searched are as follows:

That I as a Detective of the Cedar Rapids, Iowa Police Dept. have been assigned to participate in the investigation of the reported break in at 345 Woodland Drive SE on 11-2-73 and that I have availed myself of the other officers reports in the investigation and that I personally interviewed the Complainant and took a statement from him identifying a stamp stolen during the listed break in on 11-2-73 and of other information learned from him in this interview. I also personally interviewed and took a statement from a man, Roy Curtis Lawrence, who purchased certain pieces of merchandise from Lois Bean in the past and part of the merchandise has been identified as being stolen during the break in at 345 Woodland Drive SE and that I personally observed some of this recovered merchandise which has been tagged as evidence and is kept for that purpose. The statement from the complainant was taken by myself on 11-28-73 and also from the gentleman, Roy Curtis Lawrence, who purchased the stolen stamp from Lois Bean and this statement was taken also on 11-28-73 by myself. I also learned from Mr. Lawrence that he had gone to the residence of Merlin & Lois Bean and purchased items from Lois Bean merchandise, some of which Mr. Lawrence has turned over to police as stolen merchandise and while at this residence Lois went to another room and brought some of this merchandise to Mr. Lawrence to display to Mr. Lawrence for purchase. I also personally know that stolen merchandise has been handled by the Bean family in the past and I also knew that both of the Bean family, Lois and Merlin have been charged with violations of state laws for stealing and/or stolen merchandise. Some of the merchandise purchases has already been identified as being stolen from Mr. Wellso.

WHEREFORE, the undersigned applies to Judge Siebenmann, a Judge of the Iowa District Court of Linn County, Iowa, for a search warrant to be issued and the said residence and outbuildings for said property.

/s/ FRANCIS ENGRAV

Subscribed and sworn to before me and in my presence by said Francis Engrav this 29th day of November, 1973.

/s/ DENNIS A. BENTER
Notary Public in and for Linn County Iowa

EXHIBIT "A"

C. G. Wellso—345 Woodland Drive, SE
Cedar Rapids, Iowa

Wellso burglary 11/2/73 Friday

List of articles taken from our residence on 11-2-73.

Stereophonic set with speakers—Panasonic
Panasonic clock-radio
Panasonic clock-radio (John's)
1 set of microphones
1 microwave oven portable (Amana purchased Smulekoff's Dec. 1971)
1 radio-phonograph (purchased March 1973) John's
1 electric razor
1 portable black and white television set
1 zipper brief case—new (1973)
1 moustache mug
1 typewriter (Olivetti portable non-electric)
1 antique clock
Assorted dolls
Merchant's National Bank checks—probably from #1046-1090 (large size green and probably some others as well. Probably—small size—green
1 Nikon-F camera with F 2. lens purchased 1964
1 Kodak movie camera super 8
1 Bell & Howell Movie camera
1 Bell & Howell Movie projector
1 Polaroid Land camera
1 Nikon telephoto lens

1 pair Zeiss binoculars
1 pair of Sunset binoculars
1 pair of Japanese made binoculars—don't recall trade name
1 National electronic flash (strobe light)
1 polaroid flash attachment
Elizabeth's instamatic
John's tape recorder
Charles' blue panasonic round radio
1 brass antique milk pail
1 leather jewelry box—man's
1 14K gold Accutron with black band—watch engraved CGW CLW 1963
1 18K gold ring with inlaid blue enamel St George and the dragon
1 Elgin watch (father's) no band
1 pair jade cufflinks—silver mounting
2 brass bas-relief plates art object—Russia
1 pair black and gold cufflinks
1 pair green cufflinks—gold mounting
1 silver ring—with black stone—man's
Stamps—New mint British stamps 1973 est. $30.00
Plat blocks—mostly before 1930 est.
Single stamp—Scott's 292 $1. black mint o.g. well co'd. (Police have picture of stamp)
Mint sheets about #25
Misc. other stamps
Austrian stamp collection
Elizabeth stamp book—American stamps
John's First Day covers—British Planes church stamps—British
Silver spoon with Lion on it—Lausanne Switz.
Unicef box with about 16.00 dollars in it.
Leather chest 8" x 12" from Morocco
John's big jar of foreign money—about 100 dollars worth
Russian copper coin 1911

Wife's jewelry box large white red velvet interior
earrings
pins
gold watch
Antique jewelry—necklace from Hungary garnets with pendant
Antique Victorian fine dark Topaz in gold 14 K gold mount with gold chain
Old watch fob necklace—from wife's grandfather
Amethyst ring in antique setting from Hungary

Jewelry

Gold Pin from Costa Rica—18K gold
Topaz earrings from Panama
Alexandrite pin in 18k gold mount from Egypt 1964
Gold and Alexandrite earrings from Egypt
Opal Pin (Boyson's)
Garnet Pin C. R.
Ruby pin C. R.
Ring from parents
Black Majorica Pearls
Pearls from Uncle Montelle
Silver and Turquoise necklace from Jerusalem
Opal earrings from Marshall Fields

Records

Roberta Flack
Charlie Byrd
Tape Cassette—two
10 1964 Canadian silver dollars
5 1966 special mint sets

APPENDIX D.

On December 3, 1973, there was filed the following:

SEARCH WARRANT

THE STATE OF IOWA TO ANY PEACE OFFICER OF LINN COUNTY, IOWA.

Proof having been this day made before me as provided by law that certain property is owned or possessed in violation of the laws of Iowa in said county, in the State of Iowa, in the place, building, and dependencies thereto described as follows: (Describe as set forth above.)

609 Wiley Boulevard NW, residence of Lois and Merlin "Buck" Bean in Cedar Rapids, Linn County, Iowa and other buildings at this residence and occupied by and in possession of the person above named as defendant and being satisfied that the foregoing recital relative to said property is probably true, now, therefore, you are commanded to make immediate search of the premises and person above described and search for:

Property stolen in the break in at 345 Woodland Drive SE on 11-2-73 as Reported to police and if said property or any part thereof be found you are commanded to bring said property forthwith before me at my office.

Dated at Cedar Rapids, this 29 day of November, 1973.

/s/ JOHN F. SIEBENMANN,
Judge of the Iowa District Court of Iowa, Linn County.

APPENDIX E.

MOTION TO SUPPRESS EVIDENCE.

Comes now, the Defendants and move the Court to suppress evidence more specifically described hereinafter for the following reasons:

1. On November 29, 1973, one Francis Engrav presented an Information for Search Warrant to Judge John F. Siebenmann of the Linn County District Court.

2. Said Information for Search Warrant does set forth sufficient information to provide "probable cause" for the issuance of a search warrant.

3. The Search Warrant issued and subsequent search and seizure of evidence (See Exhibit "A") were obtained in violation of the Defendant's constitutional rights under the Fourth Amendment to the Constitution of the United States.

WHEREFORE, Defendants respectfully request that all evidence obtained as a result of the aforementioned search be suppressed for use as evidence herein.

LAWYER, LAWYER, DUNN
& JACKSON,

/s/ MARTIN R. DUNN,
Martin R. Dunn,
427 Fleming Building,
Des Moines, Iowa 50309,
Telephone: (515) 288-2213,
Attorneys for Defendants.

APPENDIX F.

On March 15, 1974, there was filed the following:

AMENDMENT TO MOTION TO SUPPRESS EVIDENCE.

Comes now, the Defendants, Merlin Bean and Lois Bean, and amend their Motion to Suppress Evidence filed in the District Court of the State of Iowa in and for Linn County on the 13th day of March, 1974, as follows:

1. By dropping "609 Wiley Boulevard NW, residence of Lois and Merlin 'Buck' Bean in Cedar Rapids, Iowa, Linn County, and structures at this residence," in the caption and substituting "Merlin Bean and Lois Bean" in lieu thereof.

2. By inserting the word "not" in Paragraph 2 thereof so that it reads "Said information for Search Warrant does not set forth sufficient information to provide 'probable cause' for the issuance of a search warrant"

LAWYER, LAWYER, DUNN
& JACKSON,

/s/ MARTIN R. DUNN,
Martin R. Dunn,
427 Fleming Building,
Des Moines, Iowa 50309,
Telephone: (515) 288-2213,
Attorneys for Defendants.

APPENDIX G.

On May 3, 1974, there was filed the following:

RULING ON MOTION TO SUPPRESS EVIDENCE.

The motions to suppress evidence and amendments thereto filed in the above-captioned cases came on for hearing before the undersigned on April 5, 1974. Hearing on the same could not be concluded on the aforementioned date and, therefore, further evidence was received on April 10, 1974, and April 26, 1974. At all times relevant herein the above-named defendants were present in the courtroom and represented by legal counsel; Lloyd Humphreys being present on all three days and Martin Dunn on April 5 and April 10. The State was represented by Thomas Horan of the Linn County Attorney's Office.

The Court having heard the evidence introduced and being advised in the premises finds:

FINDINGS OF FACT.

On November 29, 1973, Detective Francis Engrav of the Cedar Rapids Police Department with the aid of Assistant Linn County Attorney Ronald Luehrsmann and Detective Denton Schultz of the Cedar Rapids Police Department prepared and executed an Information for Search Warrant concerning 609 Wiley Boulevard Northwest, residence of Lois and Merlin "Buck" Bean in Cedar Rapids, Linn County, and structures at this residence. Said Information for Search Warrant together with a Search Warrant were on said date presented to Associate District Judge John Siebenmann for review and execution of Search Warrant. Said Information for Search Warrant and Search Warrant were presented to Judge Siebenmann at his residence during the evening hours of November 29, 1973; at which time Detective Engrav was sworn in by Judge Siebenmann and gave additional information concerning the matters alluded to in the information of the Search Warrant. The same being that someone had purchased a British stamp of considerable value from Lois Bean, the defendant herein.

Upon reviewing the Information for Search Warrant together with the list of items attached thereto; Judge Siebenmann found that there was probable cause for the execution of the Search Warrant and, therefore, issued the same.

The Search Warrant was executed shortly after 3:00 p.m. on November 30, 1973, at which time Detective Engrav together with other members of the Cedar Rapids Police Department executed the same at 609 Wiley Boulevard in Cedar Rapids, Linn County, Iowa. At the time the members of the police department arrived at said residence, no one was home. Detectives Engrav, Staves, Millsap and Fuller entered the residence through an unlocked back door and proceeded to search for the items listed on the documents attached to the Search Warrant. The entire residence was searched and the items seized were reflected in the inventory attached to said Search Warrant.

Many of the items seized and listed in the inventory do not coincide with the items as listed when the Search Warrant was requested and issued. However, the items seized pursuant to said Search Warrant were done so at the direction of Detective Engrav who had good reason and knowledge to believe that said items were material and relevant as stolen goods or contraband concerning offenses reported to the Cedar Rapids Police Department.

The undersigned further finds as a matter of ultimate fact that all of the items specifically and directly referred to by the evidence introduced at the time of this suppression hearing were properly seized.

The undersigned further finds as a matter of ultimate fact that the evidence introduced at the time of this suppression hearing does not indicate any prior search of any residence, real property or mobile home owned by the defendants herein,

therefore, no issue concerning the same arises which would bear upon the validity of the issuance of the Search Warrant herein.

The undersigned further finds as a matter of ultimate fact that the evidence introduced herein showed probable cause for the issuance of the Search Warrant herein.

CONCLUSIONS OF LAW.

Probable cause for the issuance of a search warrant exists where facts and circumstances within affiant's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a reasonable man to believe that an offense has been or is being committed.

State v. *Oliveri*, 156 N. W. 2d 688.

Officers searching with a search warrant are not limited to seizure of items named therein, they may seize stolen goods or contraband found.

State v. *Hardesty*, 153 N. W. 2d 464.

Evidence is properly seized if it is material and relevant to the inquiry, i.e., it may be seized simply for the purpose of proving a crime.

State v. *Collins*, 152 N. W. 2d 612.

RULING.

IT IS THEREFORE THE RULING OF THIS COURT that the motions to suppress evidence as amended filed in the above numbered causes of action are hereby overruled and the items shown in the inventory seized by reason of the Search Warrant issued herein shall not be suppressed at time of trial for any Constitutional infirmities.

* * * * *

Dated this 3rd day of May, 1974.

/s/ A. F. HONSELL, JR.,
Judge, Sixth Judicial District of Iowa.